

VZCZCXRO0298

PP RUEHAO RUEHCD RUEHGA RUEHGD RUEHHA RUEHHO RUEHMC RUEHMT RUEHNG
RUEHNL RUEHQU RUEHRD RUEHRG RUEHRS RUEHTM RUEHVC
DE RUEHCV #1507 3042048
ZNY CCCCC ZZH
P 302048Z OCT 08
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 2050
INFO RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS
RHEHNSC/NSC WASHDC
RUMIAAA/HQ USSOUTHCOM MIAMI FL
RUCPDOG/DEPT OF COMMERCE
RUEATRS/DEPT OF TREASURY

C O N F I D E N T I A L CARACAS 001507

SIPDIS

E.O. 12958: DECL: 10/30/2018

TAGS: [ECON](#) [EFIN](#) [PREL](#) [EINV](#) [PGOV](#) [VE](#)

SUBJECT: VENEZUELA: CONSTITUTIONAL COURT UPHOLDS
INTERNATIONAL ARBITRATION

REF: CARACAS 01197

Classified By: Economic Counselor Darnall Steuart for reasons
1.4 (b) and (d).

¶1. (SBU) On October 17, the Venezuelan Supreme Court (Court) upheld the constitutional viability of international arbitration. The decision interpreted Article 258 of the Constitution, which states "The law shall promote arbitration, conciliation, mediation and any other means of alternative dispute resolution." This Article, as well as Article 22 of the 1999 Law on Promotion and Protection of Investments, has been cited by former investors such as ExxonMobil, as providing them access to arbitration with the World Bank International Centre for Investment Disputes (ICSID.)

¶2. (SBU) In the interpretation, the Court acknowledged the virtues of arbitration and a constitutional right to arbitration. However, it resolved that the Bolivarian Republic of Venezuela (BRV) must expressly consent to arbitration and that Article 22 does not provide a clear and open offer of consent to ICSID arbitration. To reach this conclusion, the Court reasoned that the determination for arbitration rests solely in Venezuelan law rather than a consideration of both Venezuelan and international law.

¶3. (C) EmbOffs spoke with an attorney, Elizabeth Elijuri (protect), of Macleod Dixon S.C, who reported that the legal community views the decision quite favorably. The ICSID arbitration panels, she said, would not be bound by the fact that the GBRV had elicited this decision from its government-controlled Supreme Court. For cases in which Article 22 has already been invoked, the ICSID tribunals will have to take into account arguments in Venezuelan law as well as those of international law to determine if ICSID has jurisdiction. Also, this interpretation does not nullify arbitration protection offered to investors protected by Bilateral Investment Treaties (BITs.)

¶4. (SBU) Comment. Post expected the Court's interpretation to nullify all avenues to arbitration when the BRV is party to a legal dispute. Instead, it ratifies the existence of a fundamental right to arbitration and holds out the possibility that the State can submit itself to a national or international arbitration procedure. The decision will, however, have to be considered by the arbitration panel convened by investors such as ExxonMobil and ConocoPhillips.
End Comment.
CAULFIELD